Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Application of	)	MB Docket No. 15-149
	)	
Charter Communications Inc.,	)	
Time Warner Cable Inc.,	)	
Advance/Newhouse Partnership	)	
For Consent to Assign or Transfer Control of	)	
Licenses and Authorizations	)	

OPPOSITION OF DISH NETWORK CORPORATION, AMERICAN CABLE ASSOCIATION, AND INCOMPAS TO PETITIONS FOR RECONSIDERTATION

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DISH Network Corporation ("DISH"), the American Cable Association ("ACA"), and INCOMPAS oppose the Petitions for Reconsideration of the Commission's September 11, 2015 order setting forth the standards for limited disclosure of confidential information in this proceeding ("Order").[1] This time last year, many of the same parties complained that the Commission's standard for disclosure lacked sufficient clarity to be enforced. The Commission having addressed this complaint, Petitioners now object to essentially *any* disclosure of confidential information by the Commission, no matter how limited or circumscribed. As the Commission has amply explained, this cannot be and is not the case. The Commission should deny the petitions.

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[1] *Applications of Charter Communications, Inc., Time Warner Cable Inc., and Advance/Newhouse Partnership for Consent to Assign or Transfer Control of Licenses and Authorizations, Protective Order*, FCC 15-110, MB Docket No. 15-149 (Sept. 11, 2015) ("*Order*"); CBS Corp., U.S. Chamber of Commerce, Motion Picture Association of America, Scripps Networks Interactive, Inc., The Walt Disney Company, Time Warner Inc., Twenty First Century Fox, Inc., Univision Communications Inc., and Viacom Inc., Petition for Reconsideration, MB Docket No. 15-149 (Oct. 13, 2015) ("CBS Pet."); Comcast Corp. and NBCUniversal Media, LLC, Petition for Reconsideration, MB Docket No. 15-149 (Oct. 13, 2015) ("Comcast Pet.").

SUMMARY

Once again, the Commission is faced with a challenge to its authority to allow limited, circumscribed review of confidential information in a merger proceeding. Once again, allegations are lodged about violations of the Administrative Procedure Act ("APA") and actions contrary to the Trade Secrets Act. And once again, the public's ability to provide specific and informed comment on applicants' benefit claims and the real and potential perils of a proposed merger are at risk.

But that is where the similarities between the Fall of 2014 and Fall of 2015 end. This time, the Commission has issued a careful and detailed order setting forth the basis for its authority and its reasoning for allowing limited access to confidential materials. As the Commission has made clear, the Communications Act empowers the Commission to establish its own processes and procedures for the proceedings before it, including with respect to disclosure issues. And the Commission has set forth in detail why it believes that the limited and controlled disclosures authorized by the protective order in this case represent an appropriate balance between the competitive concerns and the more general public interest.

Contrary to Petitioners' assertions, neither the Commission's own standards for public disclosures under the Freedom of information Act ("FOIA") nor the Trade Secrets Act foreclose the Commission's actions here. As the Commission explained, the "persuasive showing" standard under the agency's FOIA regulations is not required where, as here, the Communications Act itself authorizes the disclosure. And the Trade Secrets Act only precludes disclosure when such is not "authorized by law." Here, 47 U.S.C. § 154(j) *does* authorize the Commission to allow such disclosures to the extent "conduc[ive] to the proper dispatch of the Commission's business and to the ends of justice."

Review of documents related to the programming practices, negotiations, and arrangements of the applicants is particularly important in this proceeding. Not only will the applicants have an increased incentive and ability to strong arm third party programmers to the disadvantage of competing over-the-top ("OTT") services, but the parties will also have an increased ability and incentive to deny competing video distributors access to affiliated content—Discovery and STARZ—at reasonable rates.

In sum, the Commission has taken to heart last year's lessons and set forth—and followed—the standard for disclosure in clear and unmistakable fashion. In doing so, the Commission has addressed the threat to fulsome discourse that Petitioners' arguments present and cured any infirmities that may have existed in last year's go-round on this same issue. DISH, ACA, and INCOMPAS therefore urge the Commission to deny the Petitions for Reconsideration.

ARGUMENT

I. The Commission Enjoys Broad Discretion to Interpret its Statute and Regulations

The Commission's discretion to determine how to protect confidential information necessary for a thorough review of the proposed merger is rooted in statute. The Communications Act allows the FCC to "conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice." 47 U.S.C. § 154(j). This flexible ability to conduct its proceedings includes determinations about "subordinate questions of procedure," *FCC v. Pottsville Broad. Co*., 309 U.S. 134, 138 (1940), and the power "to prescribe rules for specific investigations, and to make *ad hoc* procedural rulings in specific instances," *FCC v. Schreiber*, 381 U.S. 279, 289 (1965) (citations omitted) (upholding an FCC decision denying a request for an *in camera* hearing to protect trade secrets).

How to protect confidential information in the instant merger review falls squarely within this discretion. Indeed, expert agencies, well-versed in the regulated industry, are best suited to evaluate the complex policy concerns implicated by the specifics of protective orders. "It is well established 'that it is the agencies, not the courts, which should, in the first instance, establish the procedures for safeguarding confidentiality.'" *United States v. Cal. Rural Legal Assistance, Inc.*, 722 F.3d 424, 429 (D.C. Cir. 2013) (citing *FTC v. Texaco, Inc*., 555 F.2d 862, 884 n. 62 (D.C. Cir. 1977)). The ultimate question is "whether the exercise of discretion by the Commission was within permissible limits." *Schreiber*, 381 U.S. at 291. The answer here is yes.

II. The *Order* is Fully Compliant with the Administrative Procedure Act and *CBS Corp. v. FCC*

A. Notice and Comment Rulemaking Is Not Required

Contrary to Petitioners' contentions,[2] neither the APA nor the Trade Secret Act requires the FCC to undertake notice-and-comment rulemaking in order to modify or clarify its confidentiality rules in merger proceedings.[3] Petitioners' reliance on *Chrysler Corp. v. Brown*, 441 U.S. 281 (1979) to support their contentions is unavailing.[4] *Chrysler* imposes no such requirement. *Chrysler* simply holds that "[a]n interpretative regulation or general statement of agency policy cannot be the 'authoriz[ation] by law'" required to permit disclosure of confidential information consistent with the Trade Secrets Act. The Commission is not relying on its own policies or interpretive regulation as a source of authority to allow limited disclosures of confidential information. As the Commission has made plain, "the Communications Act and our regulations provide that authorization, as well as the authorization to adopt protective orders when the Commission finds they are warranted." *Order* ¶ 13. The Commission relied upon 47 U.S.C. § 154(j) as its authorizations to release confidential information pursuant to protective orders in the instant case, not an interpretative regulation or general statement of policy. *Id.*

B. The Commission Fully Explained the Underlying Rationale for Its Decision

Petitioners launch a multitude of attacks arguing that the Commission has not adequately explained the rationale for the *Order* or appropriately reconciled the *Order* with the D.C. Circuit's decision in *CBS Corp. v. FCC*, 785 F.3d 699 (D.C. Cir. 2015). The truth is not that the

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[2] *See* CBS Pet. at 7-8; Comcast Pet. at 6.

[3] *See* 18 U.S.C. § 1905; 5 U.S.C. §§ 551-559.

[4] *See* CBS Pet. at 7-8; Comcast Pet. at 6.

Order is defective, but that the Petitioners are dissatisfied with the choices made by the Commission.

Petitioners' key contention is that the Commission must apply the requirement of a "persuasive showing" justifying disclosure of confidential information to the public at large found in the Commission's FOIA regulations, 47 C.F.R. § 0.457(d), when it considers whether to make a limited disclosure of confidential information to participants in a merger review proceeding pursuant to a protective order. Petitioners contend that the *Order* arbitrarily abandons use of the "persuasive showing" standard with respect to protective orders and that the D.C. Circuit required use of that standard in *CBS Corp.*

1. The Commission Applied an Appropriate Balancing Test to Protective Order Disclosures

While it is true that the D.C. Circuit applied the "persuasive showing" standard in *CBS Corp.*, it did so because the Court believed that the Commission itself intended to apply that standard, and that the Commission's decision on the applicable standard was entitled to deference. *CBS Corp.*, 785 F.3d at 704. The Court expressly refused to find that the "persuasive showing" standard was the only permissible standard for making disclosure decisions pursuant to protective orders. Instead, the court noted that it had done its "best to make sense of the confusing and often contradictory materials in light of the Commission's own stated understanding of them." *Id.* at 708. The court therefore took

> no position on what the Commission should do next. . . . [T]he Commission is free to clarify its current policy or to amend it. It may, for instance, explain who must make the required "persuasive showing"; what must be a "necessary link in a chain of evidence" – the confidential information itself or third-party comments on it; and whether 'necessity' is the standard at all.

Id. In other words, the court held that the Commission has great latitude to fashion a disclosure policy for protective orders so long as the Commission adequately explains what its policy is.

In the *Order*, the Commission accepted the court's invitation and took the "opportunity to clarify and provide our reasoning and procedures for using protective orders, as well as our procedures for determining whether to publicly release such information." *Order* ¶ 3. The Commission clarified that, contrary to Petitioners' contention here, the "persuasive showing" standard does not apply to protective orders and had not been applied by the Commission to evaluate disclosure pursuant to protective orders since at least 1998. *See Order* ¶¶ 44-47. The Commission distinguished between its regulations implementing disclosure of confidential information under the Freedom of Information Act, 47 C.F.R. § 0.457(d), which require a "persuasive showing" before broad-based, public inspection will be permitted, and limited disclosure of confidential information under a protective order. *Order* ¶ 6. The Commission explained that the source of its authority to use protective orders is 47 U.S.C. § 154(j), which provides that the Commission "may conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice." *See Order* ¶¶ 4, 13. Under the statutory provision, the standard for disclosure is not the "persuasive showing" of the FOIA regulations, but "a balancing of the public and private interests involved." *Schreiber*, 381 U.S. at 291-92; *see also Order* ¶¶ 6, 13, 18 n.65, 36, 44-47.

Explicitly applying this balancing test to the use of protective orders, the Commission found that "allowing participants to review the competitively sensitive information submitted in licensing proceedings pursuant to our protective orders serves the public interest." *Order* ¶ 12. The Commission went to great lengths to explain why full and meaningful public participation in its regulatory proceedings is necessary and in the public interest. *See Order* ¶¶ 8-15. The D.C. Circuit in *CBS Corp.* agreed with the public interest value of such participation. The court noted that the benefits to the public of facilitating participation through disclosure of confidential

information under protective orders were "obvious" because third party review of confidential documents would "ensure a sounder decision." *CBS Corp.*, 785 F.3d at 705. The "different perspective on materials that the Commission is considering" that is provided by third parties "facilitates informed decision making." *Id*. The D.C. Circuit had criticized the Commission in *CBS Corp.*, asserting it "made no effort to explain how disclosure of [confidential materials] to any and every qualifying entity that might file a comment in this proceeding is necessary to the process." *Id.* at 708. Here, the Commission has expansively addressed the importance of meaningful public participation.

The Commission also considered in its balancing the potential harm from disclosure of confidential information under protective orders. The Commission found that "the risk of harm in allowing commenters to review that information pursuant to our protective orders is small." *Order* ¶ 16. Again, the court in *CBS Corp.* had reached the same conclusion. *CBS Corp.*, 785 F.3d at 705 ("The risks involved in disclosure . . . appear minimal").

The Commission's balancing led it to conclude that "allowing the materials in the record to be reviewed pursuant to an appropriate protective order both reflects a sensible balancing of the public interest considerations (including the Congressional policies underlying the Trade Secrets Act) and 'best conduce[s] to the proper dispatch of the Commission's business and to the ends of justice.'" *Order* ¶ 22 (quoting 47 U.S.C. § 154(j)).

2. The Commission Did Not Alter Its Practice of Providing Access to Confidential Information Pursuant to Protective Orders

Contrary to Petitioners' assertions, the *Order* does not represent a change in practice by the Commission. As the Commission made clear in the *Order*, the protective order issued in this proceeding continues the Commission's longstanding policy of providing access to confidential information under protective orders to participants in merger proceedings: "The Protective

Order is substantially the same as the ones the Commission, through its Bureaus, has routinely adopted over the past fifteen years . . . ." *Order* ¶ 3 n.6. Petitioners are simply wrong that the Commission has historically used the "persuasive showing" requirement to limit access to confidential information under protective orders. As the Commission explains in the *Order*, it has not imposed the "persuasive showing" standard that applies in FOIA cases to limit disclosure under protective orders since at least 1998 when the *Confidential Information Policy Statement*[5] was issued. *Order* ¶¶ 44-47.

DISH has pointed out in prior proceedings[6] that carriage agreements and similarly commercially sensitive documents have routinely been requested, and provided, in major media merger reviews. The Commission has, on multiple occasions, required merger applicants to provide, for review by both the FCC and interested parties, documents of the highest commercial sensitivity under protective orders. In Comcast/NBCU, the FCC required the applicants to produce carriage agreements and related negotiation materials with non-applicant third parties under a protective order that restricted such information to outside counsel and experts not involved in competitive decision-making.[7] Much the same occurred in the Adelphia/Time

[5] *Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission, Report and Order*, 13 FCC Rcd. 24816 (1998) ("*Confidential Information Policy Statement*").

[6] *See* DISH Network Corp., Opposition to Application for Review and Emergency Request to Stay, MB 14-57, 14-90 (Oct 29, 2015).

[7] *See Applications of Comcast Corporation, General Electric Company and NBC Universal, Inc. for Consent to Assign Licenses or Transfer Control of Licensees, Information and Discovery Request for Comcast Corporation*, MB Docket No. 10-56 (May 21, 2010); Letter from William Lake, Chief, Media Bureau Chief, FCC, to Michael Hammer, *et al*., Counsel to Comcast Corp., MB Docket No. 10-56 (June 11, 2010).

Warner/Comcast transaction.[8] The Commission also required the applicants in the EchoStar/Hughes/DIRECTV merger proceeding to produce and make available video programming agreements to parties under protective order procedures.[9]

In fact, the Petitioners are the ones asking for a transformative departure from Commission practice. They seek to radically limit, or perhaps eliminate, the availability of materials under protective orders by requiring the Commission to apply the same standards to protective order disclosure that apply to release of information under FOIA.

As the Commission explains in the *Order*, "disclosing confidential information pursuant to a protective order is an *alternative* to public release" under the FOIA. *Order* ¶ 45 (emphasis in original). The choice faced by the Commission in developing the *Confidential Information Policy Statement* was "between requiring *all* of the information to be filed publicly or allowing some information to be made available for review only pursuant to a protective order; the choice was not between allowing review pursuant to a protective order or not allowing review by commenters at all." *Order* ¶ 19; *see also Order* ¶ 9 n.21. As a consequence, "[i]n the years since the *Confidential Information Policy Statement* was adopted, the Commission has never

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[8] *Adelphia Communications Corp., Time Warner Cable, Inc. and Comcast Corp. for Consent to the Assignment and/or Transfer of Control of License, Second Protective Order*, 20 FCC Rcd. 20073, 20075-76 ¶ 7 (2005); Letter from Donna Gregg, Chief, Media Bureau, FCC, to Brad Sonnenberg et al., Counsel to Adelphia Communications Corp., MB Docket No. 05-192 (Dec. 5, 2005); Letter from Donna Gregg, Chief, Media Bureau, FCC, to Joseph Waz et al., Counsel to Comcast Corp., MB Docket No. 05-192 (Dec. 5, 2005); Letter from Donna Gregg, Chief, Media Bureau, FCC, to Steven Teplitz et al., Counsel to Time Warner Inc., MB Docket No. 05-192 (Dec. 5, 2005).

[9] *Echostar Communications Corp, General Motors Corp., and Hughes Elec. Corp., Order Adopting Second Protective Order*, 17 FCC Rcd. 7415 (2002); *Echostar Communications Corp, General Motors Corp., and Hughes Elec. Corp., Initial Information and Document Request*, CS Docket No. 01-348, at 1 (Feb. 4, 2002) (Attachment to Letter from W. Kenneth Ferree, FCC, to Pantelis Michalopoulos, Counsel to EchoStar, and Gary Epstein, Counsel to General Motors and Hughes Electronics, CS Docket No. 01-348 (Feb. 4, 2002)) (requesting documents related to a number of issues, including programming material and certain programming agreements).

ruled that material submitted in the record should be withheld from review." *Order* ¶ 19. Although Petitioners appear to believe that the "persuasive showing" standard should be used by the Commission to refuse parties access to confidential information under protective orders, the Petitioners fail to cite any case in which the Commission has actually done so.

3. The Commission's Analysis of the Need for Protective Order Disclosures Would Satisfy the "Persuasive Showing" Standard

The Commission appropriately concluded that even if a "persuasive showing" were required with respect to protective orders, the factors it had considered "in concluding that all of the information filed in the record in a licensing proceeding should be available for review pursuant to a protective order" would satisfy the standard. *Order* ¶ 46. The Commission's discussion of the role that public participation plays in its proceedings clearly demonstrates that such participation is necessary for the Commission to properly execute its responsibilities.

III. The *Order* Does Not Violate the Trade Secrets Act

Petitioners argue that the *Order* violates the court's decision in *CSB Corp.* and the Trade Secrets Act both under the standard it articulates for disclosure pursuant to protective orders and for public disclosure under the FOIA. Petitioners are wrong on both counts.

As to disclosure of confidential information under protective orders, the Commission rejected the argument that its disclosure of confidential information could violate the Trade Secrets Act because "the Communications Act and our regulations provide" the legal authorization for disclosure that the Trade Secrets Act requires. *Order* ¶ 13. The Commission found explicit authorization to control and set the standard for disclosure of confidential information in merger proceedings in 47 U.S.C. § 154(j) and the Supreme Court's decision in

Schreiber.[10] This standard meets the objectives of the Communications Act *and* safeguards the interests protected by the Trade Secrets Act. This is because the Commission's balancing test "consider[s] the concerns of parties that favor keeping confidential their trade secrets and other competitively sensitive information, and [] consider[s] whether any release should be only pursuant to the strictures of a protective order . . . [thereby] giv[ing] weight to the purpose of the [Trade Secrets] Act to protect confidential business information." *Order* ¶ 17.

As to disclosure of information pursuant to the FOIA, Petitioners' arguments boil down to the contention that the *Order* adopts a "mere relevance" standard, and that the D.C. Circuit held that the requirements of the Trade Secrets Act "can be satisfied only by a 'necessity' showing." CBS Pet. at 10. This contention is clearly incorrect. The D.C. Circuit's discussion does suggest that any relevance standard that would make confidential information "routinely available for inspection," *CBS Corp.*, 785 F.3d at 706, would be inappropriate, but the court explicitly did not hold that "necessity" was the required standard for disclosure. The court stated that in reconsidering its disclosure standards, the "Commission is free" to consider "whether 'necessity' is the standard at all." *Id.* at 708.

In any event, Commission has not adopted a "mere relevance" standard for FOIA disclosures. Rather, as the D.C. Circuit had suggested it could, the Commission clarified that a "persuasive showing" under its regulations does not require a person seeking public release of

[10] Petitioners suggest, based on their reading of *Chrysler*, that section 154(j) is merely a "housekeeping" statute that grants the agency authority to function and that it cannot, therefore, provide the legal authorization required by the Trade Secrets Act. *See, e.g.*, Comcast Pet. at 11. The Commission is clearly correct that the more specific grant of authority to manage the proceedings before it contained in section 154(j) demonstrates that the section is not a "housekeeping" statute of the type discussed in *Chrysler*. *See Order* ¶ 13 n.41.

information to demonstrate that such release was "'vital' or absolutely necessary." *Order* ¶ 36. As explained in the *Order*, the Commission will evaluate FOIA requests

> on a case-by-case basis, balancing the public and private interests for and against public disclosure and taking into account, among other factors, the type of proceeding, the relevance of the information, the nature of the information, and whether the requestor is a party to a proceeding. In sum, a requestor makes a persuasive showing when it demonstrates that, balancing the various interests in light of all the factors, public disclosure of the confidential information serves the public interest.

Order ¶ 38. The Commission also stated that to justify disclosure under the FOIA,

> there must be more than a "mere chance" that the confidential information will be helpful, and it must provide more than "factual context," before the Commission will consider publicly releasing a confidential document. The ultimate question we decide is whether, weighing the various factors, and the public and private interests and policy considerations in favor and against disclosure, publicly disclosing the confidential information serves the public interest.

Order ¶ 43. Relevance is a factor in the "persuasive showing" standard described by the Commission in the *Order*, but it is far from the only factor. With this clarification, it is clear that the Commission's actions would pass muster under the persuasive showing standard even if it applied.

IV. Third Party Participation in Commission Proceedings is Necessary and Serves the Public Interest

The Commission's Order correctly recognizes that full public participation in its regulatory proceedings is necessary and serves the public interest. Taking any steps to preclude access to confidential materials under protective orders would disserve the public interest and prevent interested parties from being able to fully and meaningfully evaluate the applicants' arguments at issue in a proceeding.

The Commission has emphatically affirmed the crucial role that third parties play in its regulatory proceedings. As the Commission explained, "the Administrative Procedure Act contemplates wide public participation in rulemaking proceedings and requires the agency to

provide interested persons an opportunity to participate." *Order* ¶ 8. The Commission "recognized that access to the information provided to and examined by the Commission is *necessary* both for interested persons to participate effectively in a licensing proceeding and to provide the Commission with those participants' expertise and perspectives, which may differ from its own." *Order* ¶ 10 (notes omitted) (emphasis added). The Commission's fullest discussion of this point merits quotation in full:

> As a legal matter, the relevant case law indicates that petitioners to deny generally must be afforded access to all information submitted by licensees. And sound policy reasons support permitting review. Basic notions of fairness generally require that materials that are available to some participants in the proceeding should be available to all. Further, withholding information can have a significant impact on whether commenters have notice and an opportunity to comment meaningfully on the bases of the agency's decision. As the Commission has recognized, "[p]ublic participation in Commission proceedings cannot be effective unless meaningful information is made available to interested parties." . . . . One purpose of disclosing the information on which the Commission may rely "is to ensure that interested parties have a full opportunity to participate in the proceeding by providing a different perspective on materials that may be relied upon by the agency," thus aiding our understanding and allowing us to reach a better result. It is, after all, a core principle of our adversarial legal tradition that one party's advocacy be challengeable by another in front of the decision-maker.

Order ¶ 14 (notes omitted). The Commission's views on the public interest in full and meaningful public participation in its proceedings mirror the sentiments recently expressed by the D.C. Circuit in *CBS Corp.*.

DISH, ACA, INCOMPAS and other participants in this proceeding are enmeshed in the industry that the proposed transactions will affect and can offer unique insight to inform the Commission's analysis. As the Commission observed in Verizon/MCI: "We find that [certain highly confidential] materials are necessary to develop a more complete record on which to base the Commission's decision in this proceeding and therefore require their production. We are mindful of their highly sensitive nature, but *we must also protect the right of the public to participate in this proceeding in a meaningful way*." *Verizon Communications Inc. and MCI,*

Inc. Applications for Approval of Transfer of Control, Order Adopting Second Protective Order, 20 FCC Rcd. 10420, 10421 ¶ 3 (2005) (emphasis added). In fact, absence of full participation by parties to a Commission proceeding can taint the outcome. The D.C. Circuit has ruled that material considered highly relevant by the expert agency must be "disclosed to the parties for adversarial comment." *United States Lines, Inc. v. Fed. Mar. Comm'rs*, 584 F.2d 519, 534 (D.C. Cir. 1978). This is because a "denial of a fair opportunity to comment on [confidential materials] may fatally taint the agency's decisional process." *Nat'l Ass'n of Regulatory Utility Comm'rs v. FCC*, 737 F.2d 1095, 1121 (D.C. Cir. 1984).

Indeed, at issue in this merger are a number of assertions by the applicants and interested parties to the proceeding that can only be answered by reference to commercially sensitive information of both the applicants and other industry players. DISH has challenged the merger's claimed benefits and argued extensively that the combined company will have an increased incentive and ability to harm rival OTT providers.[11] The applicants' pre-existing infrastructure plans and the terms of the applicants' current programming agreements are central to affirming or rebutting these arguments. INCOMPAS has expressed grave concern about the combined company's ability to extract concessions from even major programmers to the detriment of broadband competition.[12] ACA has pointed out that the merger will result in substantial vertical integration as the programming interests of John Malone—a significant rights holder in both Discovery and STARZ—will acquire a substantially broader affiliated distribution base, since Mr. Malone also holds significant interests in Liberty Broadband, Charter's controlling

[11] *See* DISH Network Corp., Petition to Deny, MB Docket No. 15-149, at 46-55 (Oct. 13, 2015).

[12] *See* INCOMPAS (formerly COMPTEL), Petition to Deny, MB Docket No. 15-149, at at 5-7 (Oct. 13, 2015).

stockholder.[13] The increased vertical integration gives Discovery and STARZ greater incentive to deny access to or overcharge MVPDs, particularly those that would compete with New Charter. Measuring the likelihood or magnitude of this harm requires, in part, review of the prices, terms, and conditions of the applicants' current programming agreements, particularly how these existing contracts deal with after-acquired assets.

CONCLUSION

For the foregoing reasons, the Commission should deny the Petitions for Reconsideration.

Respectfully submitted,

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[13] *See* American Cable Association, Comments, MB Docket No. 15-149, at ii-iii, 7-8 (Oct. 13, 2015).

CERTIFICATE OF SERVICE

I, Stephanie A. Roy, hereby certify that on this 23rd day of October, 2015, I caused true and correct copies of the foregoing to be served by first class and electronic mail to the following:

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